

**Minutes of the Bench Bar Committee**  
**Topeka Courtroom 210**  
**April 3, 2006**

Members Present: Laurie Williams, Chapter 13 Representative and Committee Chair  
Hon. Janice M. Karlin, Judges Representative  
Joyce G. Owen, US Trustee Representative  
Emily B. Metzger, Standing US Attorney's Office Representative  
Jay Befort  
Douglas Depew  
Wesley Smith  
Jill Olsen  
Jeffrey Deines  
Chris Redmond  
Susan Saidian

Guest(s) Present: Hon. Robert D. Berger

Court Staff Present: Hugh Zavadil, Clerk's Representative, and Fred Jamison, Clerk

The meeting was called to order at 10:00 a.m.

1. **LBR 7056.1 - Motions for Summary Judgment (Judge Karlin)** Our current D. Kan. LBR 7056.1 deviates from D. Kan. Rule 56.1, Fed. R. Civ. P 56, and is simply incorrect in that part requiring affidavit instead of simply producing sworn deposition, interrogatory, response to request for admission/request for production, etc.

After some discussion, it was agreed that we will amend our rule to more closely parallel D. Kan. Rule 56.1 and to clarify that if a specific fact is not controverted, it will be deemed admitted. The revised version better explains how to deal with new sets of facts asserted in subsequent memoranda after the original motion. It would read as follows:

**LBR 7056.1**

**MOTIONS FOR SUMMARY JUDGMENT**

(a) **Memorandum in Support.** The memorandum or brief in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which the movant contends no genuine issue exists. The facts must be numbered and refer with particularity to those portions of the record upon which the movant relies. **All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.**

(b) **Memorandum in Opposition.**

- (1) A memorandum in opposition to a motion for summary judgment ~~must~~ **shall** begin with a section that contains a concise statement of material facts ~~about~~ **as to** which the party contends a genuine issue exists. Each fact in dispute ~~must~~ **shall** be

numbered by paragraph, **shall** refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of movant's fact that is disputed. ~~All material facts set forth in the statement of the movant will be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party. The statements required by this subsection are in addition to the material otherwise required by these rules and the applicable Federal Rules of Bankruptcy Procedure.~~

- (2) If the party opposing summary judgment relies on any facts not contained in movant's memorandum, that party shall set forth each additional fact in a separately numbered paragraph, supported by references to the record, in the manner required by subsection (a), above. All material facts set forth in this statement of the non-moving party shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the reply of the moving party.

(c) **Reply Memorandum.** In a reply brief, the moving party shall respond to the non-moving party's statement of undisputed material facts in the manner prescribed in subsection (b)(1).

~~(cd) Supporting Affidavits.~~ **Presentation of Factual Material.** All facts on which a motion or opposition is based ~~must~~ **shall** be presented by affidavit ~~or, declaration under penalty of perjury, and/or through the use of relevant portions of pleadings, depositions, answers to interrogatories and responses to requests for admissions.~~ Affidavits or declarations ~~must~~ **shall** be made on personal knowledge and by a person competent to testify to the facts stated, ~~which are admissible in evidence.~~ Where facts referred to in an affidavit or declaration are contained in another document, such as a deposition, interrogatory answer, or admission, a copy of the relevant excerpt from the document ~~must~~ **shall** be attached.

(e) **Duty to Fairly Meet the Substance of the Matter Asserted.** If the responding party cannot truthfully admit or deny the factual matter asserted, the response shall specifically set forth in detail the reasons why. All responses shall fairly meet the substance of the matter asserted.

~~(df)~~ **Time for Filing of Responses and Replies.** A party shall have 23 days to file and serve a response to a motion for summary judgment. After service of such a response, the moving party shall have 23 days to file and serve a reply memorandum in support of the motion. The period to respond or reply applies regardless of the method of service because it includes the additional three-day period allowed under Fed. R. Civ. P. 6(e).

~~(eg)~~ **Limit on Responses and Replies.** No more than one response and one reply may be filed without prior order of the court.

~~(fh)~~ **Oral Argument.** A request for oral argument may be made in the motion or any memorandum.

Douglas Depew made a motion to adopt the proposed version as amended. Wesley Smith seconded the motion. The motion was voted on and unanimously approved.

**2. LBR 3001.1(a) - Claims (Judge Karlin)** The issue of duplicate claims was raised by Jill Michaux.

Since counsel electronically receive copies of each proof of claim, getting another copy by mail is redundant. It was proposed that the first paragraph be amended as follows:

(a) **Service.** Claimants in Chapters 11, 12, and 13 must send a copy of the proof of claim to ~~debtor's counsel, or~~ **directly** to the debtor **at the time of filing**, if **the debtor is** not represented **by counsel** ~~at the time of filing~~.<sup>1</sup>

Wesley Smith made a motion to adopt LBR 3001.1(a) as amended. Laurie Williams seconded the motion. The motion was voted on and unanimously approved.

**3. §362(c)(4)(c) - Comfort Orders (Judge Karlin)**

Jill Olsen volunteered to draft and circulate S.O. 06-1 regarding this issue. Judge Karlin indicated she was interested in seeing motions for Comfort Orders contain full and complete information about the date of prior filings, what chapter, what the exact names of the debtors were, when the case was dismissed and why it was dismissed.

**4. Refund of Credit Card Payments (Fred/Hugh)** The Judicial Conference prohibits refunding of filing fees. Is our practice more liberal than the policy allows?

After some discussion, it was agreed that the issue would be tabled for now. If someone asks for return of a filing fee, they will likely be required to file a motion stating the bases for the return, and submitting a proposed order. If the clerk has caused the error, we could probably just combine a motion and order into one document and refund the fees. The Clerk will work on putting together a one-page application/order form.

**5. Payment Advices - Documentation if there are none/less than 60 days (Wes, Doug & Susan - Gang of Three)**

The Committee discussed adopting a proposed amendment to LBR 1007.1 (Initial Filings), paragraph (a)(2)(F) to require an affidavit or certification if the debtor is not required to file payment advices or other evidence of payment pursuant to § 521 of the Code. Wesley Smith proposed that paragraph (a)(2)(F) be amended as follows:

(F) copies of payment advices or other evidence of payment, if any, with all but the last four numbers of the debtor's Social Security Number redacted, received by the debtor from an employer within 60 days before the filing of the petition, **or, a certificate from the debtor stating that the debtor has not had an employer within the 60 days prior to the filing of the petition;**

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<sup>1</sup>In reviewing the draft of these minutes, Judge Karlin wonders if we should add Chapter 7 to this, since those pro-se debtors might want to see them (in asset cases where POCs get filed).

Doug Depew made a motion to adopt (a)(2)(F) as amended. Susan Saidian seconded the motion. The motion was voted on and unanimously approved.

**6. S.O. 05-1 Preparation and Filing of Matrix - (Hugh)**

A proposal was made to remove the last two sentences under “I.” and to make the last word in “L.” plural, as follows:

I. In conformance with U.S. Postal Service guidelines, all addresses should be devoid of punctuation, e.g., periods or commas, any and all special characters, e.g., #, %, /, and ( ), except the hyphen in the ZIP+4 code. ~~The name and address must not be in all capital letters except for the two-letter state abbreviation.~~ This is the only exception to the U.S. Postal Service requirements.

L. Do not duplicate names and address~~s~~.

There was no opposition by the bar. Judge Karlin said she would let the judges know.

**7. LBR 1007.1 - Initial Filings (Gang of Three)**

**8. LBR 1007.1(a)(J)(K)/1007.1(a)(M)(N) - Duplication? (Gang of Three)**

Paragraphs (a)(1)(K) and (a)(1)(N) should be stricken to correspond to revisions of the Official Forms. A proposed revision of LBR 1007.1(a)(1) would read as follows:

**(a) Assembly of Petition and Accompanying Documents.** Conventionally filed petitions (i.e., those not filed electronically, usually by pro se debtors), schedules and statements of affairs, and lists of creditors must conform to the Official Bankruptcy Forms and be printed on one side of the paper only. ~~No~~ All original documents and pleadings filed with the court ~~must be two-hole punched at the top and must not~~ shall be stapled.

(1) Voluntary petitions and accompanying documents, if applicable, must be assembled in the following order:

- (A) petition (Official Form 1 and any accompanying exhibits);
- (B) statement of financial affairs (Official Form 7);
- (C) list of creditors holding 20 largest unsecured claims (Official Form 4, only in Chapter 11);
- (D) schedules A through J (Official Forms B-6A thru B-6J, inclusive);
- (E) summary of schedules (Official Form B-6-Summary, Cover Sheet);
- (F) statistical summary of certain liabilities (Official Form B-6-Summ2, Cover Sheet);
- (G) declaration concerning debtor's schedules (Official Form B-6-Decl.);
- (H) Chapter 7 individual debtor's statement of intention (Official Form B-8);
- (I) Rule 2016(b) statement of attorney compensation (Procedural Form B-203);
- (J) statement of current monthly income and means test calculation (Procedural Form B-22A, in Chapter 7);
- (K) ~~statement of current monthly income and means test calculation with separate~~

~~IRS housing allowance (Procedural Form B-22A, in Chapter 7);~~  
~~(L)~~ statement of current monthly income (Procedural Form B-22B, in Chapter 11);  
~~(ML)~~ statement of current monthly income and disposable income calculation (Procedural Form B-22C, in Chapter 13);  
~~(N)~~ ~~statement of current monthly income and disposable income calculation with separate IRS housing allowance (Procedural Form B-22C, in Chapter 13);~~  
~~(M)~~ declaration and signature of non-attorney bankruptcy petition preparer (Procedural Form 19A);  
~~(P)~~ notice to debtor by non-attorney bankruptcy petition preparer (Procedural Form 19B);  
~~(O)~~ for a case filed under Chapter 11, and for which the debtor elects small business status, the most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed; and  
~~(R)~~ certificate required under § 521(a)(1)(B)(iii)(I) or (II) (Procedural Form 201).

**9. LBR 3015(b).1(g)(2) - Chapter 13 Plan & Pre-Confirmation Adequate Protection Payments---Last sentence re: plan payments**  
**LBR 3015(b).1(g)(3) - Last sentence re: amount of adequate protection**

A proposal was made to delete the last sentence so it would read as follows:

**(2) Plan Payments:** The Chapter 13 plan shall specify the amounts to be paid on account of each allowed secured claim to be treated under the plan. The total amount of the plan payment to be made to the trustee by a debtor pursuant to § 1326(a)(1) shall include: (I) an amount equal to any proposed adequate protection payment to each secured creditor whose claim is secured by a purchase money security interest; (ii) any trustee's fees to be paid upon the distribution of a payment described in (I); and (iii) any other amounts to be paid to the trustee under the plan. ~~The plan shall contain the name of any secured creditor to receive pre-confirmation adequate protection payments, the proper service address for receipt of payments by that creditor, and the account number.~~

Doug Depew made a motion to adopt the proposed amendment. Jill Olsen seconded the motion. The motion was voted on and unanimously approved.

A proposal was made to delete the last sentence so it would read as follows:

**(3) Amount of Adequate Protection Payments under § 1326(a)(1)(c):** Unless a different payment amount is ordered by the court, the debtor shall pay adequate protection payments equaling the payment provided in the debtor's Chapter 13 plan pursuant to subsection (g)(2)(I) plus statutory percentage trustee fees required by subsection (g)(2)(ii) when that payment is being made to the trustee. ~~If the secured creditor files a proof of claim specifying a different payment amount, the claim amount will thereafter~~

~~control for payment and distribution unless the court orders otherwise.~~

Doug Depew made a motion to adopt the proposed amendment. Susan Saidian seconded the motion. The motion was voted on and unanimously approved.

**10. LBR 3015(b).1(d) - Arrearage claim amount controls - Necessary? (J. Olsen)**

Discussion was had and Laurie agreed that the Chapter 13 trustees should work on this.

(A lunch break was taken, after which:)

**11. LBR 4002.1 - Trustee's Request for Evidence of Income Including Income Tax Returns ---Still necessary after 11 U.S.C. §521 (Gang of Three)**

After some discussion, the decision was made to leave it as is.

**12. LBR 6004.1 - Persons Prohibited from Purchasing at Sales---Necessary? (Gang of Three)**

Chris Redmond explained the history of this rule and explained why it was intended to be restrictive. Laurie suggested that if somebody feels really strongly about limiting it a little bit, we should be real careful about the language and then circulate the modifications so we can really look at them to make sure it says what we want it to.

**13. LBR 9074.1 - Ten day order submission requirement (J. Olsen)**

The perennial question about whether we should increase the time for submission of orders from 10 days to 20 was discussed. The concern is that it is often difficult, especially in Chapter 13 cases where the Trustee's signature is required, to get orders in within that time. Because the Clerk's office does not issue Notice of Orders due until the order is at least 20 days late, the Committee voted to take no action as it appears to be a transient problem because of the high volume of cases that were filed right before the law changed.

**14. Chapter 13 issues (Laurie B. Williams)**

**Plan Forms** - Jan Hamilton's suggested plan form and Laurie's version of Jan Hamilton's form (for people who file in Wichita) were distributed by Laurie. These are just suggested forms and Laurie would like to hear what people think.

**Mandatory Order to Employers to Pay** - After some discussion about whether the Court should consider requiring debtors to submit to wage orders, especially after a default, it was agreed that debtors need to have flexibility. If they default, it may be good to get an order for employer to pay, but still there is a need for flexibility (in case, e.g., debtor has reason to think it could impair his livelihood, etc.), so the order should not be mandatory.

**Mortgages Through the Plan** - The matter was discussed. There is active resistance in Topeka because of the 10% fee.

**No Look Attorney Fee in Chapter 13** - The cases that have been recently filed are much more complicated and take more time to review. In Wichita a fee of \$2,000 was established. Some debtors are filing plans now asking for \$2,500. Laurie is objecting to those and setting them for hearing to get evidence on how much time is now involved. Jan and Bill view them on a case-by-case basis. Judge Berger recommends trustees use their discretion because the fee should take into account the quality of representation of counsel.

**15. LBR 2002.1 - Notice to Creditors and Other Interested Parties --Requirement to file corrected BNC Bypass Notice (some do not know where it is to be sent) and also questions regarding the National Preferred Address List**

Hugh Zavadil gave an explanation of the National Preferred Address List.

BNC sends a Bypass Notice to debtor's counsel if an address is not valid and can't be delivered in that form. The debtor's counsel then has five days to provide the correct address right on the BNC Bypass Notice, and then file it with the court so it can be corrected in our system.

**16. Other Matters**

Judge Karlin asked whether the changes that have been recommended today can be on a cycle for next March or whether any of them are important enough that they need to have a Standing Order adopted now. The consensus was that they can be on a cycle for next March.

One thing to think about before the next meeting is what procedures are being used when a debtor is not eligible for discharge.

Possible dates for the next meeting will be circulated via email and a date will be chosen.<sup>2</sup>

The meeting was adjourned at 2:18 p.m.

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<sup>2</sup>August 30, 2006 at 10:00 in Topeka has been selected.